

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TIMMECIA NA'SHAY BUELS,
D'ONTE TREVON BICKMAN, SHANTILACY
PORSHAE CHALAE POINDEXTER, GARY
ANNTUAN DEAN POINDEXTER, JR., and
MARQUIS DESHAY ANTWON HARDY,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

NAOMI BICKHAM,

Respondent-Appellant,

and

TIMMETHY LEVEAL BUELS, GARY
POINDEXTER, RICO HARDY, and JOHN DOE,

Respondents.

In the Matter of TIMMECIA NA'SHAY BUELS,
D'ONTE TREVON BICKMAN, SHANTILACY
PORSHAE CHALAE POINDEXTER, GARY
ANNTUAN DEAN POINDEXTER, JR., and
MARQUIS DESHAY ANTWON HARDY,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

UNPUBLISHED

June 24, 2003

No. 245196

Berrien Circuit Court

Family Division

LC No. 2001-000024

No. 245197

Berrien Circuit Court

TIMMETHY LEVEAL BUELS,

Respondent-Appellant,

and

NAOMI BICKHAM,

Respondent.

Family Division

LC No. 2001-000024

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Respondent Naomi Bickham appeals as of right from the trial court order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i) and (g). Respondent Timmethy Leveal Buels appeals as of right from the same order that terminated his parental rights to the minor child Timmecia under MCL 712A.19b(3)(a)(ii) and (g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b)

I. FACTS

The parental rights of respondents Naomi Bickham and Timmethy Buels were terminated on November 1, 2002. Protective Services investigated Bickham's home after a teacher noted that Bickham's five children were sent to school in a filthy condition. The investigation revealed that the home was not suitable for children. There was trash in the bedroom where all the children slept on one broken mattress. There was little food in the kitchen and the bathroom was unsanitary. Moreover, respondent Bickham had been fired from her job and dropped from her counseling classes due to poor attendance. Respondent Bickham did not attempt to find proper housing for her family, nor did she attempt to check up on her children during foster care.

Respondent Buels was incarcerated at the time of the investigation and his incarceration could last until 2015. Although he initially visited with his daughter, he did not contact the foster family or the Family Independence Agency for at least one year.

II. TERMINATION OF PARENTAL RIGHTS

A. Standard of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW 2d 293 (1993). The trial court's decision to terminate parental rights is reviewed for clear error. *In re Trejo*, 463 Mich 341, 353; 612 NW2d 407 (2000). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). In applying this standard, the Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. *In re Miller*, 433 Mich 331, 337

B. Analysis

Respondent Bickham's parental rights were terminated under MCL 712A.19b(3)(c)(i), and (g) which provide for termination of parental rights where clear and convincing evidence establishes the following:

c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

The principle condition that led to the adjudication was respondent Bickham's neglect of her five children. Testimony established that six months after the removal of the children, respondent Bickham's home was still in an unlivable condition and she remained unemployed. Additionally, respondent Bickham did not attempt to find safe housing for her children. Therefore, the trial court did not clearly err in finding that the condition that led to adjudication continued to exist and was not reasonably likely to be rectified within a reasonable time.

Respondent Bickham could not offer proper care for her children because her counseling showed that she needed significant therapy and parenting classes in order to meet the children's needs. Visits proved that she was unable to control her children. Thus, the trial court did not clearly err in finding that respondent failed to provide proper care and custody for her children and that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time.

Respondent Buels' rights were terminated under MCL 712A.19b(3)(a)(ii) and (g) which provide:

(3) the court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(a) The child has been deserted under any of the following circumstances:

(ii) the child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

At the hearing, FIA worker Heather Hoffman testified that Buels had not contacted his daughter for over a year. Buels did not inquire about his daughter by mail or telephone. Although he was incarcerated during most of the time his children were in foster care, he did not attempt to make contact when he was not incarcerated. Based on Buels' lack of contact for over a year, the court did not err when it found that he abandoned his child for over 91 days.

Buels did not provide proper care and custody for his daughter because he did not contact her, inquire about her welfare or interact with her for over a year. His lack of contact and incarceration makes it unlikely that he will be able to provide proper care for his daughter in a reasonable time period. Therefore, the trial court did not err when it determined that he could not provide proper care and custody for his daughter.

II. BEST INTERESTS OF THE CHILDREN

A. Standard of Review

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo, supra*, at 353. The trial court's decision regarding the children's best interests is reviewed for clear error. *Id.*

B. Analysis

The evidence shows that the termination of respondent's parental rights was clearly in the children's best interest. MCL 712A 19b(5); *In re Trejo, supra*, at 356-357. The children were taken into custody from respondent Bickham because they were dirty when they attended school and because of the filthy and neglectful conditions of her home. Respondent Bickham failed to obtain suitable housing, find and maintain employment, or attend counseling during the time the children were in care. Respondent Buels was incarcerated off and on while the children were in foster care and did not contact his daughter or the FIA regarding her welfare for over a year. Under these circumstances, the statutory grounds were established by clear and convincing evidence and the trial court did not err in terminating both respondents' parental rights.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette